as President Pro Tempore of the California State Senate; ROBERT HERTZBERG, in his official capacity as Speaker of the California State Assembly,

Defendants.

FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1) Voting Rights Act
2) Fourteenth Amendment

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action, which raises federal constitutional and statutory claims, under 28 U.S.C. §§ 1331, 1343(a)(3) and (4), 2201, and 2202; as well as under 42 U.S.C. §§ 1973 and 1983. Injunctive and declaratory relief are authorized by these provisions of federal law.

2. Venue is proper in this district under 28 U.S.C. § 1391(b) in that at least one defendant resides in this district and all defendants reside in this state. Venue is also proper in this district under section 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred or imminently will occur in this district.

3. Plaintiffs request that this court convene and appoint a district court of three judges to hear and determine this action, as required by 28 U.S.C. § 2284(a) because this action challenges the constitutionality of the apportionment of congressional districts in the state of California.

INTRODUCTION

4. This action, which is brought under the United States Constitution and the Voting Rights Act of 1965, 42 U.S.C. § 1973 et seq., seeks declaratory and injunctive relief against the California state government officials (referred to as

"Defendants") who are charged with overseeing and conducting elections for congressional and state legislative seats and/or for redrawing congressional and state legislative district boundaries after each decennial census.

5. Plaintiffs seek an order prohibiting Defendants from undertaking any action to conduct congressional and state senate elections under the congressional and state senate redistricting plans passed by the California Legislature in September 2001 and signed by the governor on September 27, 2001. Both of these plans deny the Latino community an equal opportunity to participate in the political process and to elect candidates of their choice. Plaintiffs also seek an order requiring Defendants to conduct elections in 2002 and election years after under the plan that Plaintiffs propose.

PARTIES

6. The individual Plaintiffs are all Latino citizens of the United States and residents of the State of California, duly registered to vote in elections in California.

7. Plaintiff MARIA CANO is a citizen of the United States and a registered voter in California, County of Los Angeles. Plaintiff Cano resides in Congressional District 28 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Cano is Latino/Hispanic.

8. Plaintiff PAULA RANGEL is a citizen of the United States and a registered voter in California, County of Los Angeles. Plaintiff Rangel resides in Congressional District 28 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Rangel is Latino/Hispanic.

9. Plaintiff MARIA CALLEROS is a citizen of the United States and a registered voter in California, County of Los Angeles. Plaintiff Calleros resides in Congressional District 28 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Calleros is Latino/Hispanic.

10. Plaintiff NORMA E. RAMIREZ is a citizen of the United States and a registered voter in California, County of Los Angeles. Plaintiff Ramirez resides in Congressional District 28 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Ramirez is Latino/Hispanic.

11. Plaintiff MARGO MUNOZ is a citizen of the United States and a registered voter in California, County of Los Angeles. Plaintiff Munoz resides in Congressional District 28 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Munoz is Latino/Hispanic.

12. Plaintiff BENNIE G. CORONA is a citizen of the United States and a registered voter in California, County of Los Angeles. Plaintiff Corona resides in Congressional District 28 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Corona is Latino/Hispanic.

13. Plaintiff MYRON GARCIA is a citizen of the United States and a registered voter in California, County of Los Angeles. Plaintiff Myron Garcia resides in Congressional District 27 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Myron Garcia is Latino/Hispanic.

14. Plaintiff FRANK DIAZ is a citizen of the United States and a registered voter in California, County of Los Angeles. Plaintiff Diaz resides in Congressional District 27 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Diaz is Latino/Hispanic.

15. Plaintiff CONSUELO E. RODRIGUEZ is a citizen of the United States and a registered voter in California, County of Los Angeles. Plaintiff Rodriguez resides in Congressional District 27 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Rodriguez is Latino/Hispanic.

16. Plaintiff JOSE RUELAS is a citizen of the United States and a registered voter in California, County of Los

Angeles. Plaintiff Ruelas resides in Congressional District 28 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Ruelas is Latino/Hispanic.

17. Plaintiff RACQUEL TORRES is a citizen of the United States and a registered voter in California, County of Los Angeles. Plaintiff Torres resides in Congressional District 27 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Torres is Latino/Hispanic.

18. Plaintiff ENRIQUE F. ARANDA is a citizen of the United States and a registered voter in California, County of Los Angeles. Plaintiff Aranda resides in State Senate District 27 under the 2001 redistricting plan adopted by the state. Plaintiff Aranda is Latino/Hispanic.

19. Plaintiff JOSEPHINE SANTIAGO is a citizen of the United States and a registered voter in California, County of Los Angeles. Plaintiff Santiago resides in State Senate District 27 under the 2001 redistricting plan adopted by the state. Plaintiff Santiago is Latino/Hispanic.

20. Plaintiff ANTONIO M. LOPEZ is a citizen of the United States and a registered voter in California, County of Los Angeles. Plaintiff Lopez resides in State Senate District 30 under the 2001 redistricting plan adopted by the state. Plaintiff Lopez is Latino/Hispanic.

21. Plaintiff JOSE R. PACHECO is a citizen of the United States and a registered voter in California, County of Los Angeles. Plaintiff Pacheco resides in State Senate District 27 under the 2001 redistricting plan adopted by the state. Plaintiff Pacheco is Latino/Hispanic.

22. Plaintiff LUIS NATIVIDAD is a citizen of the United States and a registered voter in California, County of San Diego. Plaintiff Luis Natividad resides in Congressional District 51 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Luis Natividad is Latino/Hispanic.

23. Plaintiff MARISOL NATIVIDAD is a citizen of the United States and a registered voter in California, County of San Diego. Plaintiff Marisol Natividad resides in Congressional District 51 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Marisol Natividad is Latino/Hispanic.

24. Plaintiff LUIS GARCIA is a citizen of the United States and a registered voter in California, County of San Diego. Plaintiff Luis Garcia resides in Congressional District 53 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Garcia is Latino/Hispanic.

25. Plaintiff LUZ PALOMINO is a citizen of the United States and a registered voter in California, County of San Diego. Plaintiff Luz Palomino resides in Congressional District 53 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Luz Palomino is Latino/Hispanic.

26. Plaintiff SILVIA PALOMINO is a citizen of the United States and a registered voter in California, County of San Diego. Plaintiff Silvia Palomino resides in Congressional District 53 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Silvia Palomino is Latino/Hispanic.

27. Plaintiff IGNACIO LEON is a citizen of the United States and a registered voter in California, County of San Diego. Plaintiff Leon resides in Congressional District 53 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Leon is Latino/Hispanic.

28. Plaintiff JOAQUIN GALAN is a citizen of the United States and a registered voter in California, County of San Diego. Plaintiff Galan resides in Congressional District 53 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Galan is Latino/Hispanic.

29. Plaintiff ERNESTO BUSTILLOS is a citizen of the United States and a registered voter in California, County of San Diego. Plaintiff Bustillos resides in Congressional District 53 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Bustillos is Latino/Hispanic.

30. Plaintiff CATHY ESPITIA is a citizen of the United States and a registered voter in California, County of San Diego. Plaintiff Espitia resides in Congressional District 53 under the 2001 congressional redistricting plan adopted by the state. Plaintiff Espitia is Latino/Hispanic.

31. Plaintiff JOSE A. HERNANDEZ, PH.D is a citizen of the United States and a registered voter in California, County of Los Angeles. Plaintiff HERNANDEZ resides in Congressional District 28 under the 2001 congressional redistricting plan adopted by the state. Plaintiff HERNANDEZ is Latino/Hispanic.

32. Plaintiff WENDY ESTEVEZ is a citizen of the United States and a registered voter in California, County of Los Angeles. Plaintiff ESTEVEZ resides in Congressional District 28 under the 2001 congressional redistricting plan adopted by the state. Plaintiff ESTEVEZ is Latino/Hispanic.

33. Plaintiff IMELDA LAVOIE is a citizen of the United States and a registered voter in California, County of Los Angeles. Plaintiff LAVOIE resides in Congressional District 28 under the 2001 congressional redistricting plan adopted by the state. Plaintiff LAVOIE is Latino/Hispanic.

34. Plaintiff CHRISTIAN MALDONADO is a citizen of the United States and a registered voter in California, County of Los Angeles. Plaintiff LAVOIE resides in Senate District 27 under the 2001 congressional redistricting plan adopted by the state. Plaintiff MALDONADO is Latino/Hispanic.

35. Plaintiff SOUTHWEST VOTER REGISTRATION EDUCATION PROJECT (SVREP) is a non-profit organization dedicated to advancing the interests of Latinos in the United States. Among its organizational objectives is the political empowerment of Latinos by increasing civic engagement in the American electoral system. SVREP pursues this objective through several means, including voter registration and voter education drives. Because many of the constituents SVREP serves reside in areas affected by the Defendants' violations, SVREP's organizational objectives are impeded by the violations alleged here.

36. Plaintiff MEXICAN AMERICAN POLITICAL ASSOCIATION, SAN FERNANDO VALLEY CHAPTER (MAPA SFV), is a non-profit organization dedicated to the constitutional and democratic principle of political freedom and representation for the Mexican and Hispanic people of the United States of America. Among its organizational objectives is the political empowerment of the Latino community in the United States. MAPA SFV pursues this objective through several means, including voter registration and voter education drives in Latino communities. Because many of its members and many of the constituents MAPA SFV serves reside and are registered voters or potential registered voters in areas affected by the Defendants' violations, MAPA SFV's organizational objectives are impeded by the violations alleged here.

37. Plaintiff MEXICAN AMERICAN POLITICAL ASSOCIATION, IMPERIAL VALLEY CHAPTER (MAPA IV), is a non-profit organization dedicated to the constitutional and democratic principle of political freedom and representation for the Mexican and Hispanic people of the United States of America. Among its organizational objectives is the political empowerment of the Latino community in the United States. MAPA IV pursues this objective through several means, including voter registration and voter

education drives in Latino communities. Because many of its members and many of the constituents MAPA IV serves reside and are registered voters or potential registered voters in areas affected by the Defendants' violations, MAPA IV's organizational objectives are impeded by the violations alleged here.

38. Plaintiff CALIFORNIA LEAGUE OF UNITED LATIN AMERICAN CITIZENS (CALIFORNIA LULAC), is a non-profit organization dedicated to advancing the economic condition, educational attainment, political influence, health and civil rights of the Hispanic population of the United States. Among its organizational objectives is the political empowerment of the Latino community in the United States. CALIFORNIA LULAC pursues this objective through several means, including voter registration and voter education drives in Latino communities. Because many of its members and many of the constituents CALIFORNIA LULAC serves reside and are registered voters or potential registered voters in areas affected by the Defendants' violations, CALIFORNIA LULAC's organizational objectives are impeded by the violations alleged here.

39. Plaintiff LEAGUE OF UNITED LATIN AMERICAN CITIZENS, DISTRICT 17 (LULAC Dist. 17), is an organization dedicated to advancing the economic condition, educational attainment, political influence, health and civil rights of the Hispanic population of the United States. Among its organizational objectives is the political empowerment of the Latino community in the United States. LULAC Dist. 17 pursues this objective through several means, including voter registration and voter education drives in Latino communities. Because many of the constituents LULAC Dist. 17 serves reside in areas affected by the Defendants' violations, LULAC Dist. 17's organizational objectives are impeded by these violations.

40. Plaintiff LEAGUE OF UNITED LATIN AMERICAN CITIZENS, SAN FERNANDO VALLEY, COUNCIL 3019 (LULAC Council 3019), is an organization dedicated to advancing the economic condition, educational attainment, political influence, health and civil rights of the Hispanic population of the United States. Among its organizational objectives is the political empowerment of the Latino community in the United States. LULAC Council 3019 pursues this objective through several means, including voter registration and voter education drives in Latino communities. Because many of its members and many of the constituents LULAC Council 3019 serves reside and are registered voters or potential registered voters in areas affected by the Defendants' violations, LULAC Council 3019's organizational objectives are impeded by the violations alleged here.

41. Defendant GRAY DAVIS is the duly elected Governor of the State of California. The California Constitution vests in Defendant Davis, as Governor, the supreme executive power of the state. Defendant Davis is charged with seeing that the law is faithfully executed. Defendant Davis is presented and may either sign or veto each bill passed by the California Legislature. Defendant Davis is sued in his official capacity.

42. Defendant CRUZ BUSTAMANTE is the duly elected Lieutenant Governor of the State of California. As Lieutenant Governor, Defendant Bustamante is the President of the California State Senate. Defendant Bustamante is sued in his official capacity.

43. Defendant BILL JONES is the duly elected Secretary of State of the State of California. As Secretary of State, Defendant Jones is charged with administering the election laws of the state. Defendant Jones is sued in his official capacity.

44. Defendant JOHN BURTON is the President Pro Tempore of the California State Senate. As such, Defendant Burton presides over and directs the deliberations of the State Senate on all legislation. The California Constitution charges the State Senate, as one of the houses of the California Legislature, with adjusting the congressional and state legislative district lines in the year following each decennial census. Defendant Burton is sued in his official capacity.

45. Defendant ROBERT HERTZBERG is the Speaker of the California State Assembly. As such, Defendant Hertzberg presides over and directs the deliberations of the State Assembly on all legislation. The California Constitution charges the State Assembly, as one of the houses of the California Legislature, with adjusting the congressional and state legislative district lines in the year following each decennial census. Defendant Hertzberg is sued in his official capacity.

LEGAL FRAMEWORK

46. The Equal Protection clause of the Fourteenth Amendment to the United States Constitution prohibits unjustified intentional discrimination in the form of racial gerrymandering by Defendants, acting under color of state law, in the construction of congressional and state legislative electoral districts.

47. Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973, prohibits the use of electoral policies, procedures or devices that have the effect of diluting the voting strength of racial minorities. The Act requires electoral districts to afford Latinos/Hispanics an equal opportunity to participate in the political process and to elect candidates of their choice or otherwise to influence the outcome of elections.

FACTUAL ALLEGATIONS

48. The most significant change in California's population between the 1990 census and the 2000 census is the increase in the Latino population, which grew from approximately 7.7 million persons to 11.0 million persons, an increase of over 42 percent. The addition of 3.3 million Latinos accounts for over 80 percent of the increase in California's entire statewide population. In comparison, the non-minority or white population dropped from 76 percent of the population in 1980 to 57 percent in 1990, and to 46.7 percent in 2000.

49. On March 28, 2001, the United States Census Bureau released the 2000 census population counts for California, including a breakdown for race and geographic areas including each county, minor civil division, census tract, block group, and block. The Census Bureau reported California's total population at 33,871,648; California's Latino/Hispanic population at 10,966,566, or 32.4 percent; California's Asian American/Pacific Islander population at 3,752,596, or 11.1 percent; and California's African American population at 2,181,926, or 6.4 percent of the state's total population.

50. On September 12 and 13, 2001, the California Legislature passed Assembly Bill 632, a bill encompassing the redistricting plan for the election of representatives to the United States Congress and the redistricting plan for the election of members of the California State Senate.

51. On September 27, 2001, Defendant Davis signed Assembly Bill 632, thus enacting the redistricting plans for congressional and State Senate electoral districts.

52. There are 40 single-member districts in the plan for the election of California State Senate members.

53. There are 53 single-member districts in the plan for the election of representatives to the United States Congress.

San Fernando Valley

54. The congressional redistricting plan enacted by the Legislature for the 2002 elections contains nine districts that afford geographically compact Latino populations an equal opportunity to elect candidates of choice. An additional district could have been drawn in the vicinity of Congressional Districts 27 and 28 that would afford a geographically compact Latino population the equal opportunity to elect candidates of choice.

55. Instead, the Legislature shifted what had been Congressional District 26 in the 1990s (what would become Congressional District 28 under the 2001 plan) to the south in order to pick up heavily non-Latino areas, and shifted heavily Latino areas that were previously in the District, such as Mission Hills, Sylmar, Sun Valley, and Van Nuys, to neighboring (and surrounding) Congressional District 27. This has the effect of depriving the Latino population in either district of an equal opportunity to elect candidates of choice.

56. Defendants and the State Legislature intentionally and purposefully gerrymandered congressional district lines in the San Fernando Valley with the intent of diluting the voting strength of Latino voters in what was formerly Congressional District 26 under the district plan followed for the last ten years, and to prevent the Latino population from attaining too much electoral strength in either Congressional District 27 or Congressional District 28.

San Diego

57. Congressional District 51 is a district with a majority Latino population. However, in drawing the district's boundaries, Defendants and the State Legislature deliberately left out heavily Latino neighborhoods, such as those known

as Barrio Logan, Logan Heights, Golden Hills, and City Heights, in order to prevent the district from attaining a Latino population level that might threaten the incumbent.

58. Defendants and the State Legislature thus intentionally and purposefully gerrymandered congressional district lines in the San Diego area with the intent of diluting the voting strength of Latino voters in Congressional Districts 51 and 53, and to prevent the Latino population from attaining too much electoral strength in Congressional 51 District.

Southeast Los Angeles County

59. The current State Senate plan, enacted by the Legislature for the 2002 elections, contains seven districts that afford geographically compact Latino populations an equal opportunity to elect candidates of choice. One additional district could have been drawn in the vicinity of Senate District 27 that would afford a geographically compact Latino population the equal opportunity to elect candidates of choice.

60. Instead, the adopted redistricting plan concentrates more of the area's heavily Latino neighborhoods in adjacent districts, such as Senate District 30, thus leaving Senate District 27 with a decided non-Latino majority. This has the effect of depriving the Latino population in Senate Districts 27 and 30 of an equal opportunity to elect candidates of choice.

Latinos and Voting in California

61. Legislative and statewide elections in California, including district elections in the areas in and around Congressional Districts 27, 28, 51, and 53, and in the area in and around Senate Districts 27 and 30, are characterized by racially polarizing voting.

62. Latinos in California, including the areas in which Latino majority districts can be created, are politically cohesive.

63. In California, non-Latino majority districts, including districts in the areas in and around Congressional Districts 27, 28, 51, and 53, and in the area in and around State Senate Districts 27 and 30, non-Latinos vote sufficiently as a bloc to enable them—in the absence of special circumstances—usually to defeat the Latino voters' preferred candidates.

64. The state of California has a long history of discrimination against Latino minority voters residing in the state and of disenfranchisement of qualified Latino minority voters.

65. Latinos/Hispanics in California have been subject to widespread discrimination for many years that touches on their ability to participate in the political process.

66. Latinos/Hispanics in California continue to bear the effects of discrimination in areas such as education, employment, housing and health, which depresses their socio-economic status and hinders their participation in the political process.

67. Political campaigns in California have been frequently characterized by overt or subtle racial appeals.

68. Currently, Latinos/Hispanics are severely underrepresented in the California congressional delegation and in the State Senate.

69. The redistricting plans adopted and being implemented by Defendants for the 2002 election of members to Congress and Senate dilute the Latino community's opportunity to elect candidates of choice, resulting in an unequal opportunity to participate in the political process.

70. As a result of the intentional discrimination against Latino voters in the San Fernando Valley and in the San Diego area, Latinos have less of an opportunity to participate in the political process and to elect candidates of choice.

71. At all relevant times, Defendants acted and continue to act under color of state law.

INJURY TO PLAINTIFFS

72. The intervention of this Court is now necessary to protect Plaintiffs' statutory and constitutional rights.

73. Unless the relief requested in this cause is granted, Plaintiffs will suffer denial of equal rights and protection, and a dilution of their statutorily protected right to vote. Plaintiffs have no adequate remedy at law. They have suffered, and continue to suffer, immediate and irreparable injury in the deprivation of an equal opportunity to vote and to elect candidates of choice.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violation of Voting Rights Act, 42 U.S.C. § 1973 et seq.)

74. Plaintiffs reallege paragraphs 1 through 64 above and incorporate the same as though fully set forth here.

75. The redistricting plans adopted and being implemented by Defendants for the 2002 election for members of the California congressional delegation, and for members of the California State Senate, will result in a denial or abridgement of the right to vote of Plaintiffs on account of their race, color, or ethnicity, by having the effect of canceling out or minimizing their individual voting strength as minorities in California.

76. Defendants and the State Legislature adopted the congressional district plan for the election of members of the United States Congress in the San Fernando Valley and in the San Diego area with the discriminatory purpose of fragmenting the Latino population in order to dilute the effect of the Latino vote in future elections.

77. The redistricting plans do not afford Plaintiffs an equal opportunity to participate in the political process and to elect representatives of their choice, and deny Plaintiffs the right to vote in elections without distinction of race, color, or previous condition of servitude, all in violation of 42 U.S.C. §§ 1971(a) and 1973.

SECOND CLAIM FOR RELIEF

(Violation of Fourteenth Amendment and 42 U.S.C. § 1983)

78. Plaintiffs reallege paragraphs 1 through 68 above and incorporate the same as though fully set forth here.

79. The congressional district plan adopted and being implemented by Defendants for the election of members of the United States Congress in the San Fernando Valley has no rational explanation except as an effort to separate voters on the basis of racial/ethnic origin. In drawing those lines, the reduction in Latino voting strength in what had been Congressional District 26 throughout the 1990s was the Legislature's dominant, controlling, and legally unjustified rationale.

80. The congressional district plan adopted and being implemented by Defendants for the election of members of the United States Congress in the San Fernando Valley constitutes an intentional gerrymander of the Latino population in violation of Plaintiffs' Equal Protection Rights guaranteed by the Fourteenth Amendment to the United States Constitution, in violation of 42 U.S.C. § 1983.

81. The congressional district plan adopted and being implemented by Defendants for the election of members of the United States Congress in the San Diego area has no rational explanation except as an effort to separate voters on the basis of racial/ethnic origin. In drawing those lines, the reduction in Latino voting strength in Congressional District 51 was the Legislature's dominant, controlling, and legally unjustified rationale.

82. The congressional district plan adopted and being implemented by Defendants for the election of members of the United States Congress in the San Diego area constitutes an intentional gerrymander of the Latino population in violation of Plaintiffs' Equal Protection Rights guaranteed by the Fourteenth Amendment to the United States Constitution, in violation of 42 U.S.C. § 1983.

ATTORNEYS' FEES

83. Plaintiffs are entitled to recover reasonable attorney's fees, expenses and costs under 42 U.S.C. §§ 1973*l*(e) and 1988.

PRAYER FOR RELIEF

84. THEREFORE, Plaintiffs pray this Court enter judgment granting to plaintiffs:

a) a declaratory judgment that Defendants' redistricting plans for congressional and State Senate districts deny plaintiffs equal opportunity to participate in the political process and elect representatives of their choice in violation of 42 U.S.C. § 1973;

b) a declaratory judgment that Defendants' redistricting plan for the election of members to Congress violates Plaintiffs' right to Equal Protection under the 14th Amendment to the United States Constitution, in violation of 42 U.S.C. § 1983;

c) preliminary and permanent injunctive relief restraining and enjoining Defendants, their officers, employees, attorneys, successors in office, and all persons in active concert and participation with them from conducting elections under the congressional and State Senate redistricting plans adopted by the State Legislature and Governor for the 2002 or any subsequent elections;

d) if state authorities fail to enact or adopt valid redistricting plans in time for the 2002 election, an order establishing new redistricting plans for congressional and state senate districts that conform to constitutional and legal standards, and that do not dilute, cancel out, or minimize the voting strength of Latino voters;

e) an award of costs, including reasonable attorneys' fees, to be paid by Defendants;

f) an order retaining jurisdiction to render any and all further orders that this Court may from time to time deem appropriate; and

g) orders granting any and all further relief to which the Plaintiffs may show themselves to be entitled or as may be just and equitable.

RESPECTFULL SUBMITTED,

Mexican American Legal Defense and Educational Fund

Counsels for Plaintiffs

By: /s/ Vibiana M. Andrade
VIBIANA M. ANDRADE

By: /s/ Steven J. Reyes
STEVEN J. REYES

DATED: November 30, 2001

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Filed May 7, 2002]

Case No. 01-08477 MMM (RCx)

MARIA CANO, *et al.*,
Plaintiffs,

vs.

GRAY DAVIS, *et al.*,
Defendants.

CALIFORNIA STATE SENATE, *et al.*,
Intervenors.

THREE-JUDGE COURT

DECLARATION OF PROFESSOR ALLAN J. LICHTMAN ON CANDIDATES OF CHOICE OF HISPANIC VOTERS IN NEW CONGRESSIONAL DISTRICT 28 IN CALIFORNIA

Date: May 13, 2002
Time: 10:00 a.m.
Dept.: Room 790

The Honorable Margaret Morrow
The Honorable Stephen Reinhardt
The Honorable Christina Snyder

DECLARATION ON CANDIDATES OF CHOICE OF HISPANIC VOTERS IN NEW CONGRESSIONAL DISTRICT 28 IN CALIFORINA

Allan J. Lichtman, Professor
Department of History
American University
Washington, DC 20016

May 6, 2002

INTRODUCTION

I have been asked to examine whether bloc voting by non-Hispanics within the precincts of the post-2000 Census Congressional District 28 in California is usually sufficient to defeat candidates of choice of Hispanic voters. Given my involvement over the last several months in numerous redistricting cases, I have only recently been able to turn my attention to the examination of this issue. My analysis, presented in greater detail below, shows that the results of 16 recent Hispanic v. non-Hispanic elections within the boundaries of CD 28 fail to show a usual pattern of defeat for candidates of choice of Hispanic voters. To the contrary, in most elections, Hispanic candidates of choice would have been elected within the precincts of CD 28. Thus, it cannot be concluded that there is a pattern of non-Hispanic bloc voting within CD 28 that usually is sufficient to defeat Hispanic preferred candidates.

BACKGROUND

I am a Professor of History at American University in Washington, D.C. Formerly, I served as Chair of the History Department and Associate Dean of the College of Arts and Sciences at American University. I received my BA in History from Brandeis University in 1967 and my PhD in

History from Harvard University in 1973, with a specialty in the mathematical analysis of historical data. My areas of expertise include political history, voting analysis, and historical and quantitative methodology. A copy of my curriculum vitae, which accurately sets forth my professional qualifications and experience, is attached to this report, along with a table of cases. I am being compensated at a rate of $300 per hour.

I am the author of numerous scholarly works on quantitative methodology in social science. This scholarship includes articles in such academic journals as *Political Methodology, Journal of Interdisciplinary History,* and *Social Science History.* I have also coauthored with Dr. Laura Langbein *Ecological Inference,* a standard text on the subject of inferring the behavior of population groups from data collected for political units. In addition, I have published articles on the application of social science analysis to the Voting Rights Act. This work includes articles in such journals as *Journal of Law and Politics, La Raza Law Journal, Evaluation Review,* and *National Law Journal.*

My scholarship also includes the use of quantitative and qualitative techniques to perform political and historical studies of voting, published in such academic journals as *The Proceedings of the National Academy of Sciences, The American Historical Review,* and *The Journal of Social History.* Quantitative and historical analysis also ground my books, *Prejudice and the Old Politics: The Presidential Election of 1928, The Thirteen Keys to the Presidency* (coauthored with Ken DeCell), and *The Keys to the White House.*

I have worked as a consultant or expert witness for both plaintiffs and defendants in more than seventy federal voting rights and redistricting cases. I have been admitted as an expert witness in voting rights, political history, political systems, statistical methodology, quantitative analysis of voting, and socioeconomic analysis, among other matters, in

more than sixty federal and state court cases in which I have presented oral or written testimony. I have worked on more than a dozen cases for the United States Department of Justice and have also worked for such civil rights organizations as the Mexican-American Legal Defense and Education Fund, the Puerto-Rican Legal Defense and Education Fund the NAACP, and its Legal Defense Fund, the Lawyer's Committee for Civil Rights Under Law, the ACLU, and the Southern Poverty Law Center. I have testified on the question addressed in this report in numerous other cases including the Los Angeles redistricting case—*Garza v. County of Los Angeles*—where I served as the main expert witness on voting analysis for the U.S. Department of Justice. I have also served as an expert witness in numerous cases involving Hispanic voter opportunities in states such as Texas, Florida, New York, and Illinois.

ANALYSIS AND RESULTS

To analyze elections results for newly drawn CD 28, PACTECH provided returns for 16 recent Hispanic versus non-Hispanic elections held within all or most the precincts of this congressional district. This data enabled me to reconstruct the results of past elections within all or most of CD 28 and thus assess the order of finish among primary and general election candidates. These elections cover the period from 1994 to 2001 for a variety of public offices and for primary, runoff, and general elections. An analyst examines various elections over a period of time in order to establish whether there exists a discernable pattern in the outcomes of elections with different individual candidacies and circumstances. This procedure is more reliable than focusing just on one or two preselected elections. The elections analyzed for this report thus provide a basis for reliable conclusions about whether there exists a pattern of non-Hispanic bloc voting in new CD 28 that usually is sufficient

to defeat Hispanic candidates of choice. The 16 primary, runoff, and general elections included in this analysis are reported in Table 1.[1]

TABLE 1 HISPANIC V. NON-HISPANIC ELECTIONS ANALYZED FOR PRECINCTS INCLUDED IN CALIFORNIA, ENACTED DISTRICT CD 28,1994-2001
1994 PRIMIARY ELECTION
INSURANCE COMM
1994 GENERAL ELECTION
INSURANCE COMM
1998 PRIMARY ELECTION
INSURANCE COMM
LT. GOVERNOR
SHERIFF (NON-PARTISAN)
STATE SENATE
U.S. CONGRESS
1998 GENERAL ELECTION
INSURANCE COMM
LT. GOVERNOR
SHERIFF (NON-PARTISAN) *
STATE SENATE **
U.S. CONGRESS ***

[1] In the 1998 Democratic primary for Attorney General there was also a relatively unsuccessful Hispanic candidate—Calderon—for whom I did not have data within CD 28. Statewide, Calderon received about 12 percent of the total vote and 24 percent of the Democratic vote in the open primary of 1998, where all candidates were on the same ballot and voters could chose among candidates of various parties. The *Los Angeles Times* Exit Poll (Study #413, California Primary Election, June 2, 1998) shows that Calderon received about 34 percent of the total Hispanic vote and about half of the Hispanic vote that was cast for the three main Democrats in the race.

2001 PRIMARY ELECTION (NON-PARTISAN) ****
LA MAYOR
LA CITY ATTORNEY
2001 RUNOFF ELECTION (NON-PARTISAN) ****
LA MAYOR
LA CITY ATTORNEY
* THIS WAS AN UNUSUAL ELECTION IN THAT THE NON-HISPANIC CANDIDATE IN THE RUNOFF DIED PRIOR TO THE BALLOTING FOR THE SHERIFF'S POSITION.
** THE STATE SENATE DISTRICT INCLUDES MORE THAN 70 PERCENT OF REGISTERED VOTERS OF CD 28.
*** OLD CD 26, IN WHICH THIS ELECTION WAS CONDUCTED, INCLUDES MORE THAN 60 PERCENT OF REGISTERED VOTERS OF CD 28.
**** ABOUT 96 PERCENT OF CD 28 IS WITHIN LA CITY, THE REMAINDER OF THE DISTRICT COMPRISES THE CITY OF SAN FERNANDO, WHERE VOTER REGISTRATION IS MORE THAN 70 PERCENT HISPANIC.

For 1998 primary and general elections PACTECH also provided precinct-by-precinct election returns as well as precinct-by precinct registration data, partitioned according to registrants with Hispanic and non-Hispanic surnames.[2] The information provided for the 1998 election enabled me to analyze the Hispanic and non-Hispanic vote for competing candidates, using the same statistical methods that guided my previous work as a consultant and expert witness on voter behavior, notably the ecological regression procedures for analyzing voting by race that were recognized by the Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986), and applied by the Court to single-member district plans in *Voinovich v. Quilter*, 507 U.S. 146 (1993). I likewise utilized

[2] In the *Garza* case, I likewise relied on a Spanish surname analysis of registered voters provided by PACTECH. See, Allan J. Lichtman, "Passing the Test: Ecological Regression in the Los Angeles County Case and Beyond," *Evaluation Review* (1991).

this same procedure to assess Hispanic and non-Hispanic voting in the *Garza* litigation. Analytic procedures are also discussed in the social science literature.[3]

The voting behavior of Hispanics and non-Hispanics is estimated by comparing the ethnic composition of the various voting precincts within CD 28 to the division of the vote among competing candidates in each precinct. Ecological regression, the standard method for inferring the behavior of population groups from data collected for aggregate units, was used to estimate voting and turnout. The ecological regression procedure for analyzing the behavior of voter groups is set forth in my book, *Ecological Inference* (Sage Series on Quantitative Applications in Social Science, 1978: with Laura Irwin Langbein) and analyzed, in depth, in my December 1991 article in *Evaluation Review*, which deals with the Garza case.

Similar precinct-level data was not available for the 2001 Los Angeles City elections for Mayor and City Attorney or for the 1994 primary and general elections for Insurance Commissioner. For the City elections, I relied on *Los Angeles Times* exit poll results showing that the Hispanic mayoral

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[3] See, for example, Allan J. Lichtman and J. Gerald Hebert, "A General Theory of Vote Dilution," *La Raza Law Journal* (1993); Bernard Grofman, Lisa Handley, and Richard G. Niemi, *Minority Representation and the Quest for Voting Equality* (Cambridge: Cambridge University Press, 1992); Allan J. Lichtman, "Passing the Test: Ecological Regression in the Los Angeles County Case and Beyond," *Evaluation Review* (1991); Bernard Grofman and Chandler Davidson, eds., *Controversies in Minority Voting: The Voting Rights Act in Perspective* (Cambridge: Cambridge University Press, 1992); James Loewen and Bernard Grofman, "Comment: Recent Developments in Methods Used in Voting Rights Litigation," *Urban Lawyer* (1989); Richard Engstrom, "Quantitative Evidence in Vote Dilution Litigation: Political Participation and Polarized Voting," *Urban Lawyer* (1985); and Laura Irwin Langbein and Allan J. Lichtman, *Ecological Inference* (Sage Series on Quantitative Applications in the Social Sciences, 1978).

candidate Villaraigosa was the Hispanic preferred candidate and that Hispanic city attorney candidate Delgadillo was the Hispanic preferred candidate. For the two 1994 elections, the analysis assumes that the Hispanic Democratic candidate Torres was the Hispanic voters' candidate of choice—a result consistent with other Hispanic versus non-Hispanic elections analyzed for this study.

The results of analyzing 16 Hispanic v. non-Hispanic elections that entirely or substantially overlap new CD 28, as reported in Table 2, fail to show a usual pattern of defeat for Hispanic candidates of choice. To the contrary, the results show that most Hispanic candidates of choice would have advanced to a general or runoff election within the boundaries of new CD 28 and would have been elected in a general or runoff election within these boundaries. Specifically, the analysis shows that 6 of 8 primary candidates of choice of Hispanic voters would have advanced to a general election or runoff election within the boundaries of CD 28.[4] In addition, the analysis shows that 8 of 8 general or runoff election candidates of choice would have been elected in a general election or runoff election within the boundaries of CD 28. With respect to individual candidates, 6 of 8 candidates

[4] State senate candidate Alarcon in the 1998 primary election won within a more than 70 percent portion of new CD 28 that was at that time about 7 points higher in its percentage of Hispanic registrants than the entirety of CD 28. However, Alarcon prevailed by about 10 percentage points over his Democratic opponent, and projections based on ecological regression analysis and comparisons with candidates who ran district-wide show that Alarcon would have prevailed within the entirety of CD 28.

TABLE 2

RESULTS FOR HISPANIC CANDIDATES OF CHOICE IN HISPANIC V. NON-HISPANIC ELECTIONS IN PRECINCTS INCLUDED IN CALIFORNIA, ENACTED DISTRICT CD 28, 1994-2001

ELECTIONS AND HISPANIC CANDIDATES OF CHOICE	ORDER OF FINISH IN CD 28
1994 PRIMARY ELECTION	
INSURANCE COMM	
TORRES (H, DEM)	2
1994 GENERAL ELECTION	
INSURANCE COMM	
TORRES (H, DEM)	1
1998 PRIMARY ELECTION	
INSURANCE COMM	
MARTINEZ (H, DEM)	1
LT. GOVERNOR	
BUSTAMANTE (H, DEM)	1
SHERIFF (NON-PARTISAN)	
BACA (H)	2 (MADE GENERAL)
STATE SENATE	
ALARCON (H, DEM)	1
U.S. CONGRESS	
GODINEZ (H, DEM)	2

TABLE 2, CONTINUED

RESULTS FOR HISPANIC CANDIDATES OF CHOICE IN HISPANIC V. NON-HISPANIC ELECTIONS IN PRECINCTS INCLUDED IN CALIFORNIA, ENACTED DISTRICT CD 28, 1994-2001

ELECTIONS AND HISPANIC CANDIDATES OF CHOICE	ORDER OF FINISH IN CD 28
1998 GENERAL ELECTION	
INSURANCE COMM	
MARTINEZ (H, DEM)	1
LT. GOVERNOR	
BUSTAMANTE (H, DEM)	1
SHERIFF (NON-PARTISAN)	
BACA (H)	1
STATE SENATE	
ALARCON (H, DEM)	1
U.S. CONGRESS	
BERMAN (NH, DEM)	1
2001 PRIMARY LA CITY (NON-PARTISAN)	
MAYOR	
VILLARAIGOSA (H)	1
CITY ATTORNEY	
DELGADILLO (H)	2 (MADE RUNOFF)

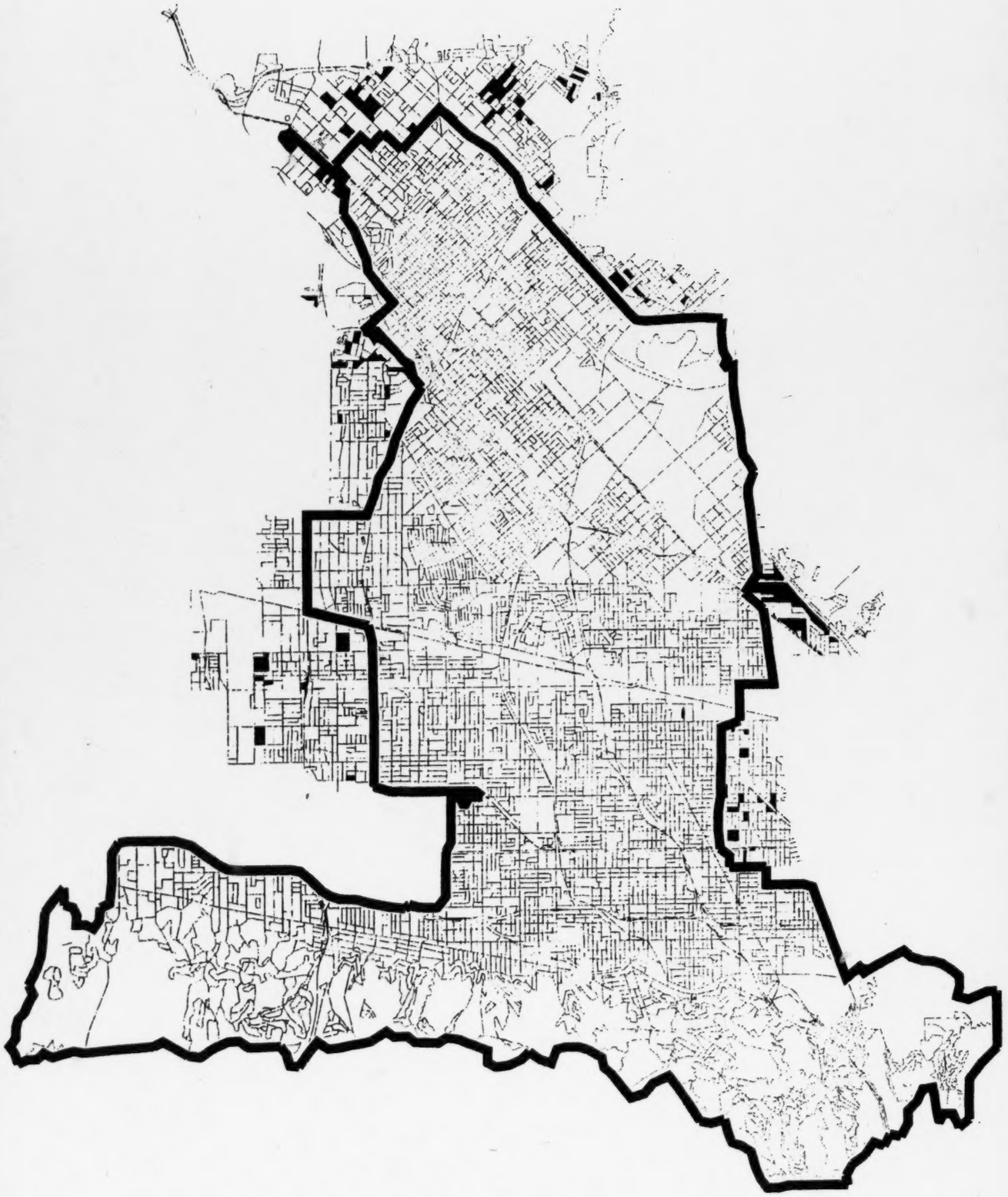
2001 RUNOFF LA CITY (NON-PARTISAN)	
MAYOR	
VILLARAIGOSA (H)	1
CITY ATTORNEY	
DELGADILLO (H)	1

identified as Hispanic would have advanced through the primaries and been elected to public office if the election for their positions had been held within new CD 28. Thus the results of analyzing a substantial number of elections for a variety of public offices clearly show that non-Hispanic bloc voting does not usually defeat Hispanic candidates of choice within newly drawn Congressional District 28 in California.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of May 2002 in Washington, D.C.

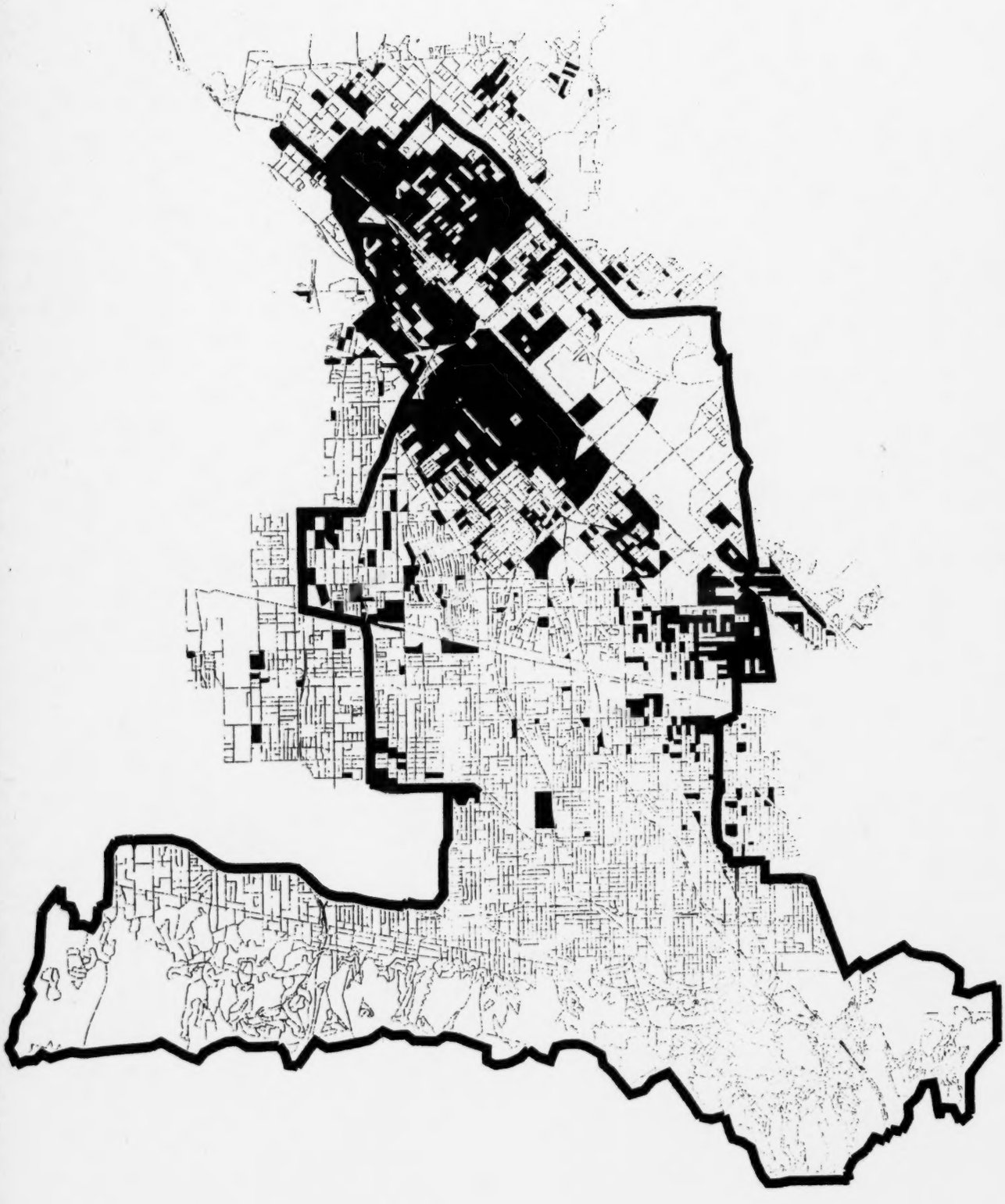
/s/ Allan J. Lichtman
ALLAN J. LICHTMAN

Core Hispanic Registration Census Blocks (55% -100%) In Masters' Berman District Excluded From AB 632's CD 28



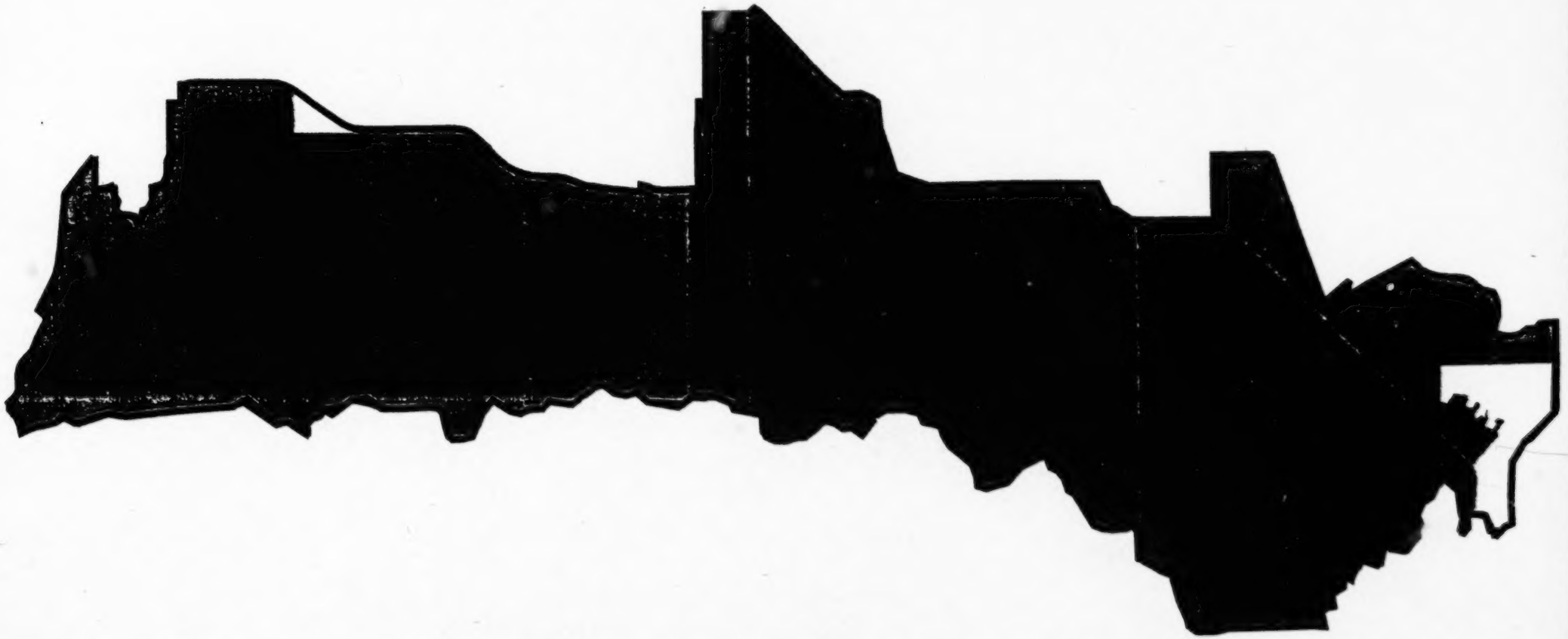
This map highlights in red all census blocks included in the Masters' CD 26 (Berman) with Hispanic Registration 55% or higher but excluded from AB 632's CD 28 (Berman)

Core Hispanic Registration Census Blocks (55%-100%) In Masters' Berman District Included In/Excluded From AB 632's CD 28



This map highlights in red all census blocks included in the Masters' CD 26 (Berman) with Hispanic Registration 55% or higher. The black line represents the new CD 28 (Berman) boundaries

98.6% of Additions Made by AB 632 to Berman District Were Represented by Him Previously



The area above bounded in black is the area that was added to the Masters CD 26 (Berman) to make AB 632's CD 28 (Berman) The area shaded in orange represents areas previously represented by Representative Berman.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Filed May 3, 2002]

Case No. 01-08477 MMM (RCx)
THREE-JUDGE COURT

MARIA CANO, *et al.*
Plaintiffs,

vs.

GRAY DAVIS, *et al.*
Defendants.

CALIFORNIA STATE SENATE, *et al.*
Intervenors.

MEMORANDUM RE: DEPOSITION TESTIMONY OF ASSEMBLYMAN VARGAS IN SUPPORT OF SENATE DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

Date: May 13, 2002
Time: 10:00 a.m.
Dept.: Room 790

The Honorable Margaret Morrow
The Honorable Stephen Reinhardt
The Honorable Christina Snyder

In the recent deposition noticed by Plaintiffs, Assemblyman Juan Vargas provided extensive testimony that contradicted Plaintiffs' claims and that also explained his motivations, both in the Legislature and in this case. As provided for in the Court's order relating to legislative

privilege, he also opined about "the motivation of the [Legislature] as a whole." *Cano v. Davis*, 2002 WL 432057 at *1 (C.D. Cal. 2002). A copy of the full deposition transcript is attached to this memorandum as Exhibit A. Below are some excerpts:

• Plaintiffs contend that in drawing Congressional District 51 ("CD 51"), the Legislature deferred to Representative Bob Filner's alleged desire to limit Latino demographics in his district. But, as Assemblyman Vargas testified, heavily Latino Imperial County was included in the district over Representative Filner's protest, in apparent deference to MALDEF's demands:

Q. You had a lot of curiosity about CD 51—
A. Sure.
Q. —during the redistricting process, correct?
A. Yes.
Q. And you had very strong views about what ought to be in it or not?
A. Yes.
Q. And you thought that Imperial County ought to be in it.
A. Yes.
Q. And you knew that Representative Filner opposed that?
A. Yes.

(Transcript of Deposition of Juan Vargas ("Tr.") 43:14-44:7.)

• Assemblyman Vargas conceded that in CD 5l, as established by AB 632, Latinos are the dominant political force in a racially diverse community:

Q. The area that is now bounded by the CD 51 in area 632. You're familiar with that area?
A. Yes.
Q. And you described that as a racially diverse community?
A. Yes.

Q. Is there one race that you regard as being predominant in the area or one ethnic group?
A. What do you mean by predominant?
Q. In terms of population?
A. The largest number of population I believe is Latino population.
Q. What about in terms of registration?
A. What type of registration?
Q. Voter registration. Which group is most heavily present?
A. For which party?
Q. Regardless.
A. I would believe and believe it's the Latino community.
Q. And just within the Democratic party, what is the predominant ethnic group in the confines of the current CD 51?
A. I believe the Latino community. Predominant meaning, I assume, the most compared to the other groups.

(Tr. 56:3-57:3.)

• Plaintiffs' recently-withdrawn "remedial" proposal, along with Assemblyman Vargas' design for CD 51, cut large pockets of the African-American and Filipino population out of the district in as attempt to further increase Latino population figures above the level that Professor Kousser has admitted to be sufficient. While not conceding intent, Assemblyman Vargas admitted that the excision of these populations would be politically damaging to Representative Filner:

Q. Did you come to any conclusions about Representative Filner's popularity within the Filipino community?
A. Yes.
Q. What conclusion did you reach?

A. That he was well liked.
Q. Very, very popular in that district.
A. At that time?
Q. In that community, rather.
A. At that time?
Q. At that time, yes.
A. Not at that time I wouldn't say very, very popular. He became a short time after that time.
Q. And why was that?
A. He was running a bill for veterans who had fought in World War II, Filipino veterans but were Filipino citizens, not American citizens, and they did not receive benefits as American soldiers did. And he ran a bill that in fact got the president of the Philippines to come to the district, my recollection it was after that time. He may have had the bill before that, but I think the popularity came after that time.
Q. So in the fall, though, of the years 2001, you knew that Representative Filner was very, very popular in the Filipino community in San Diego.
A. I believe that he was very popular.

(Tr. 61:15-62:18.)

• On the diversity of the Latino population in San Diego, even among Democrats, Assemblyman Vargas admitted:

Q. Within the Latino community in San Diego who are Democrats, is there an uniformity of views or is there a wide variety of views?
A. I think that there is a wide variety of views.
Q. On what kinds of issues?
A. I believe on all issues. On most issues, I should say.

(Tr. 71:19-25; *see also generally* Tr. 71-76.)

• Contrary to the notion that African-Americans, "Anglos" and Asian/Pacific Islanders form a bloc that votes against Latino interests, Assemblyman Vargas testified that Latinos/African-Americans and Latinos/Filipinos are in fact "cohesive," and that there is no significant part of either group that is unwilling to vote for a Latino candidate:

Q. In the area bounded by CD 51 under the current AB 632 districts, do you believe that the African-American community and the Latino community are politically cohesive?
A. What do you mean by politically cohesive?
Q. Well, do they vote the same way?
A. On which issues?
Q. Generally.
A. More than likely, I think so, yes.
Q. The same area CD 51 under AB 632, do you think that Filipinos and Latinos tend to be cohesive politically?
A. Do you mean again do they vote on the same sorts of issues, a bond measure if it were to pass or a school measure or something like that?
Q. Uh-huh.
A. I would say that they would probably be very similar.
Q. Is it your belief that there is a significant part of the African-American population that is unwilling to vote for a Latino candidate?
A. No.
Q. And is it your view that there is any significant part of the African-American community that's unwilling to vote for a Latino candidate?
A. I believe that's the question you just asked me.

Q. I'm so sorry. Do you believe that there is any significant portion of the Filipino community that's in the bounds of the current CD 51 that is unwilling to or very reluctant to vote for a Latino candidate?
A. No.

(Tr. 76:3-77:9.)

• When asked to name areas in San Diego where non-Latino Democrats would be unwilling to vote for a Latino candidate, Assemblyman Vargas named only areas that lie *outside* CD 51:

Q. Where are the areas in CD 51 where you believe there are concentrations of non-Latino Democrats who would be unwilling to vote for a Latino because the person is Latino, the candidate's Latino?
A. A concentration?
Q. Yeah, particular areas where you see this as a more serious problem.
A. I would say that throughout the area there are groups. I don't know where the concentration would be, if there would be any concentration.
Q. But I think you mentioned that there were areas in San Diego where this would be a problem.
A. That's correct.
Q. And what are those areas?
A. But just so I'm clear, the areas that you mentioned were San Diego as a whole, not the 51st. I think that areas in the east County of San Diego, I think that those areas would be very difficult to elect a Latino. I think in the northeastern portion of the county as well. I think other areas in the northern part of the county would be very difficult.
Q. Okay. Let's find out what these areas are like.
A. Sure.
Q. North county, that's Del Mar, Carlsbad, Encinitas, that area?

A. Generally.
Q. But that area isn't in CD 5 l, right?
A. No, it's not.
Q. Then you mentioned the northeastern portion of San Diego County.
A. Yes.
Q. Can you give me some place names there?
A. Yes, I can. Escondido, Vista, Ramona, areas like that.
Q. And those are areas that are not in CD 51.
A. That is correct.
Q. Eastern part of the county you mentioned as an area where it would be very difficult for a Latino candidate to win.
A. That's correct.
Q. Those aren't areas that are included in CD 51.
A. That's correct.

(Tr. 80:23-82:15; *see also* 83:16-84:17 (unable to name areas within CD 51 in which non-Latino Democrats would not support a Latino candidate).)

• Instead, Assemblyman Vargas testified that in the San Diego area, it is the character of the candidate that matters most, rather than her ethnicity or race:

Q. Well, what you're really saying is that it's the candidate who matters more than his ethnicity or her ethnicity in elections in your old and current Assembly District.
A. I think that you're right, that it's more. That certainly the candidate matters more than only race.
Q. Sure. People are judging your politics, your character, your appeal, they're looking at a lot of things, not just at race, right?
A. People are looking at a lot of things, not only race, that's correct.

Q. In fact, race isn't district-wide the predominant factor that non-Latinos are looking at when they're making decisions about who to vote for. And now I'm just talking about the Democratic party.

A. Again, I don't understand your question. I apologize.

Q. In the Democratic party in the areas that you've been representing in the Assembly, there is no problem with people voting for Latinos, as you've proven, right? The right candidate, right qualities?

A. I think that there are areas where in fact a Latino candidate, he or she cannot get some votes because of his or her race, but I think in general you can run a race and a Latino can win.

(Tr. 85:5-86:5.)

• The Assemblyman also conceded that in his legislative role he was motivated by his own future political plans:

Q. Are you saying that in this redistricting process you never considered your own personal political fortunes? That was not part of your motivation?

A. No, that's not what I said.

Q. You did consider your own political future.

A. Yes.

Q. And you were interested in having a CD 51 that would be a good one for you to run in?

A. Not necessarily for me to run in, but certainly for a person who might want to run who would be from the community. Again, I'm not sure that I ever will run for that district again.

Q. I'm not talking about a person. I'm talking about Assemblyman Juan Vargas and your motivation. It was part of your motivation to try to get the Legislature to pass a CD 51 that would be a good one for you to run in against Filner at some time in the future?

A. My motivation was to make sure it was a good district for either myself or another person that would come from the community to have an opportunity without it being gerrymandered in a racial way.

Q. So part of your motivation had to do with your own political future.

A. I think part of my motivation, potentially my political future, because again I don't know that I will ever run for that district, at the moment don't have any plans for that. That could change.

(Tr. 106:4-107:6.)

• These political plans combined in a potent manner with the Assemblyman's acknowledged personal distaste for the "ugly" "Marxist" Representative Filner. After he expressed a personal belief in "clean" campaigns, Assemblyman Vargas acknowledged that he did not hesitate to attack Representative Filner in the strongest possible terms during the 1996 campaign:

Q. Well, you didn't have any compunction about doing that in 1996, right? You called Representative Filner a Marxist. It wasn't just sort of a nice little doily covered campaign for you. You were a hard hitter.

A. I don't recall that. I could have said it. I certainly believed that he was.

Q. A Marxist?

A. Yeah.

Q. And why do you believe he's a Marxist?

A. At that point because in fact a number of people who knew him and told me that as a young man he was a person who not only had written on Marxism, but he was a person who believed in the doctrine of it.

Q. Who were these people?

A. My campaign consultant as well as a couple of other campaign consultants in San Diego who then showed me a couple articles that were written in the "San Diego Union Tribune" early on.

Q. But you called him a Marxist in the present tense, right?

A. Yes. Well, I have to see that again, but I imagine I probably would have.

Q. And you said he was ugly?

A. In 1996, I don't believe I did.

Q. You came to the view that he's ugly later?

A. No, I always thought he was ugly.

Q. I understand the distinction.

A. I don't think I said till recently, not in the way that you suggest. I think I said an ugly—I think the quote you're probably looking at I think he's something like a selfish and ugly person. I didn't mean physically ugly.

Q. You have used the word ugly repeatedly?

A. I don't know about repeatedly.

* * * *

Q. That's clean campaigning or defending yourself?

A. I think that's defending yourself.

(Tr. 119:8-120:21.)

• Assemblyman Vargas also gave vivid testimony about the force of his hatred for Representative Filner:

Q. You're defending that he's ugly and the most selfish person you know. Is there anybody in the world that you hate as much as Representative Filner?

A. I hate a lot of people, I think, as much as I hate Bob.

Q. Any people in politics that you hate as much as Bob?

A. Yes.

Q. Who is that?

A. People who were involved in the Central American War.

Q. On which side of that war?

A. Certainly on all sides. The United States, people who were sending weapons to fight down there, people on the military side of El Salvador, people on the military side of Nicaragua, people involved in all the carnage that went on there. I believe that all those people, you know, had just a disastrous effect on people's lives that was horrible.

Q. Including the Americans who sent weapons to those wars.

A. Yes.

Q. Particularly people in the political administrations?

A. Yes.

Q. The Reagan administration?

A. The Reagan administration.

Q. So other than the Reagan administration and mass murderers in Central America, is there anybody in politics other than those who you hate as much as Bob Filner?

A. Yes, absolutely. A woman named Barbara Warden who I used to work with and unfortunately had a real falling out with. Certainly dislike her as much as I dislike Bob Filner. I think that I would have to say there's a few other people I'm learning to dislike very much as I'm up here.

(Tr. 121:22-122:7.)

• The Assemblyman underlined what has been obvious since the beginning of this case—that his personal ambitions and personal hatreds played a central role in his legislative acts, and continue to play a role in his participation in this case:

Q. Certainly, you'd relish any opportunity that you would have to stick it to Bob Filner given how much you hate him.

A. I don't know that I would classify it as that. I certainly wouldn't be upset if anything I did was detrimental to his political campaign, but, again, only his political campaign. Not anything else.

Q. Sure. I mean like removing his district that has supported him most heavily. That would be pretty attractive.

A. Yes, I believe so.

(Tr. 122:14-123:6.)

• Finally, Assemblyman Vargas dissented from Plaintiffs' continuing "intent" allegations ascribing discriminatory intent to the State's two legislative bodies. He was asked his opinion of the motivation of the Legislature as a whole:

Q. And is it your opinion that the Legislature voted as a whole to discriminate against Latinos in adopting this redistricting plan?

A. No.

(Tr. 132:14-17.)

Dated: May 3, 2002

Respectfully submitted,

JONATHAN H. STEINBERG
BRUCE A. WESSEL
LAURA W. BRILL
AIMEE DUDOVITZ

By: /s/ Jonathan H. Steinberg
JONATHAN H. STEINBERG

Attorneys for Defendant John Burton in his official capacity as President *Pro Tempore* of the California State Senate and Intervenor California State Senate